

Chairwoman Ingraham and members of the committee: My name is Lori Hamm, L-O-R-I H-A-M-M, and I am the Notary Compliance and Education Specialist for the Secretary of State's office, which is responsible for appointing and commissioning Montana's notaries public. I am also one of the 19,847 active notaries in the state of Montana. I am speaking on behalf of Secretary of State Linda McCulloch in opposition to HB 306.

There are three primary concerns that we have about this bill.

1. First, the proponents of the bill are mischaracterizing 1-5-416(1)(h), MCA as "business regulation" when it is, in fact, proper regulation of public officials. Montana's nearly 20,000 notaries public are, indeed, public officials just like you, me, and the other 12,000+ state employees insofar as their official duties are concerned.

Admittedly, the vast majority of our notaries are employed by the thousands of private and public sector entities around the state. Yet the fact remains that every single one of these individuals, at the time when they are providing notarial services to or for their employers, co-workers, or customers, are acting as ministerial agents of the State of Montana. They are notaries public, not notaries private. As public officials, notaries must be held to the same standards as all other public officials.

2. Second, the bill creates an environment that actively encourages improper notarizations which can seriously harm the public as well as the notary.

Almost every important transaction in your life involves a notarized document. Yet, too often many people regard notarization as little more than a clerical nuisance with little perceived value. Perhaps that is because there are so many documents that require notarization and there is generally no charge for notary services. Certainly the misperception that notarial activity is not important underlies the assertion that keeping a notary journal is onerous and unnecessary.

In fact, the notary is the first line of defense against fraud of all types. The notary determines that the person appearing in front of the notary is who they say they are and that they are knowingly and willingly signing the document that is being notarized. The trust that is required to conduct everyday business transactions is based on the understanding that a notarized document can be accepted and acted upon in good faith. Anything that minimizes or invalidates that trust impedes the conduct of American business.

You've all heard about the mortgage foreclosure crisis, and the "robo-signings". This is from last Sunday's Atlantic Business Journal:

"The longer it took to foreclose, the more money the banks stood to lose. Like so many in the industry, Stern had a strategy to cope with all the volume and velocity: robo-signing. One employee testified that ... a one-time file clerk ... signed as many as 1,000 foreclosure affidavits a day without reading a single word. ... She also signed numerous mortgage assignments with a notary stamp that didn't even exist at the time of signing..."

Literally thousands of people lost their homes, including some here in Montana, partially due to the performance of a notary public under the direction of a business that considered notarizations just routine, perfunctory, clerical functions to be handled in the most expeditious, albeit illegal, manner possible.

Fine, you may say, but those people weren't paying their mortgages, so who cares if there was massive fraud in the repossessions?

Let me tell you about an elderly lady who lives in southwest Montana. She was suffering from the early stages of dementia, so her son allegedly had her sign a Power of Attorney giving him authority over her finances. He used that Power of Attorney to clean out all her bank accounts – to the tune of over \$200,000, leaving her destitute and living on welfare. Our office is currently involved in the investigation because there is a question as to whether she actually signed the Power of Attorney and/or whether it was properly notarized. Because the notary did not enter that particular transaction in her journal – which she did keep ordinarily – the litigation will be lengthy, contentious, and expensive.

Speaking of litigation, at this time I would like to submit for the record letters from two members of the Montana State Bar in opposition to HB 306. Both of these attorneys are currently working on cases involving allegedly fraudulent notarizations – one on a motor vehicle title and the other on an estate trust document. The journal entries – or lack thereof – will be critical evidence in the eventual resolution of these matters.

In Montana, notaries are required to file a \$10,000 bond with our office, but they are personally liable for the full amount of the damages or losses suffered due to their malpractice or negligence. Would you take a job in which you got no pay at all, but you were liable for an unlimited amount of damages if you do something wrong, even inadvertently? In the past year our office has received complaints against notaries involving almost \$400,000 in alleged losses – averaging \$65,000 per claim. That's a lot of money for a bank teller or a car salesman! I have yet to investigate a case in which the notary was found liable if he or she kept a journal properly for each transaction. A \$12 journal is the cheapest and best insurance available to notaries.

I have letters from two of the largest insurance companies underwriting Montana notary bonds, both opposing HB 306.

William G. Peterson, Vice President of CNA Surety, states that, **"A notary's journal has proven to be a very valuable tool in determining the validity of a claim. This helps to protect the notary if they have acted properly, or the consumer if they have not..."**

James A. Holter, Assistant Vice President of Merchants Bonding Company, writes in his letter, "As an underwriter of surety bonds and notary errors and omissions policies, we are involved in a wide variety of cases in which the notary has been accused of wrongdoing. Often the journal is the primary piece of evidence to determine what actually occurred..."

Does it really matter if a notary does the job properly? Did you realize that seven of the nine terrorists who murdered almost three thousand people on 9/11 were able to obtain valid IDs on the basis of fraudulently notarized documents? Many types of notarized documents literally grant the power of life and death to another person.

Some of the bills you will enact this session will require affidavits, waivers or other signed and notarized statements as proof that someone did, or intended to do, something. Shouldn't the people of Montana be able to rely on the authenticity and veracity of those documents? Yet the notarization on the document is only half the story. It's very easy to challenge a signature and claim it was forged, or made under duress or without the signer's full intent and knowledge. Only a notary's journal provides legally accepted proof of what happened. Passage of HB 306 will strengthen the Law of Unintended Consequences more than you can anticipate.

3. Third, the repeal of 1-5-416(1)(h), MCA does not absolve a notary from the responsibility of "creating" a record of his/her official acts – it only removes the statutory clarification of what is expected to be included in the record and how it is to be "kept and maintained".

You – as legislators – spend millions of taxpayer dollars to create the record of your hearings, your deliberations, your debates, amendments and votes. The Secretary of State's office has a whole section dedicated to the storage, preservation, and retention of public records from state and local agencies throughout Montana. As a state employee, I am expected to save copies of all my correspondence, emails, documents, even this testimony, just in case sometime, somebody needs to reference something. All public officials are responsible for creating records that document official government acts. Notaries are no different. Every court in this country recognizes the notary journal as the legally expected form of record for a notary public's official acts. Failure to create such a record is, in itself, negligence – the failure to take "reasonable care" in the performance of one's duty.

While all notaries will still be legally responsible to have a written record of their official acts, HB 306 would leave the individual notary to guess whether to include driver's license numbers, social security numbers, birthdates, fingerprints. What constitutes enough information, what is too much? 1-5-416(1)(h), MCA was carefully crafted to include sufficient information to protect the notary, the employer, and the public and not

so much that the journal contains private information that can be used for fraudulent purposes such as identity theft.

Some people have voiced concerns about privacy issues. To the best of my knowledge there has never been a successful legal challenge anywhere in the country to a notary journal on the basis of a privacy violation. I have also been told by some that journals are not allowed in some financial institutions because of the national Graham Leach Bliley Act. I have checked with the experts in the State Auditor's office and there is absolutely no conflict because no financial information is contained in the notary journal.

At this time I would also like to submit for the record a letter from the National Notary Association, which represents millions of notaries nationwide and over 12,000 notaries here in Montana, urging that you reject HB 306.

I also have a letter from the Billings Clinic, one of the largest private employers in the state. Mr. Randall G. Penton, the Director of Risk Management writes, "It is the Billings Clinic' opinion the notary journals are a key piece of our risk management procedures... The journals serve as protection for our notaries and our corporation..."

Two years ago when the bill addressing this issues was debated, many people told us that notaries would be resigning by the thousands because of the additional requirements. To date, we have received resignations from 26 notaries citing the new law as the reason for resignation and the number of active notaries now is approximately the same as we had two years ago.

We understand. Record keeping in all its forms is a hassle. It is something that we have to live with because there is no other conclusive way to prove what transpired if something is challenged months or years in the future.

Should the state of Montana encourage the 20,000 notaries to be irresponsible by implying that it is acceptable not to keep a record of an official transaction? Should the state of Montana be exposing our notaries to unlimited personal liability because a notary journal is just too much hassle? Can you claim that you are for public transparency, and then encourage public officials not to keep records of their official actions?

The official acts of a notary public are not routine. They are not perfunctory, clerical machinations. A notarization is a solemn pledge by the state of Montana that renders documents worthy of the public trust, and offers assurance that a document is authentic, that its signature is genuine, and that its signer acted willingly and intended the terms of the document to be in full force and effect. The notary journal – the official record of this public act – is the prima facie evidence that proves the notarization to be true.

I urge you to protect our notaries, protect the public, and protect our businesses by continuing to mandate the best and cheapest defense against fraud – the journal. I urge you to vote no on HB 306.

Thank you madam Chair and members of the committee.